



**4310-GG-P**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

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**Proposed Supplementary Rules for the Morley Nelson Snake River Birds of Prey  
National Conservation Area**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Proposed Supplementary Rules.

**SUMMARY:** The Bureau of Land Management (BLM) is proposing supplementary rules for all BLM-administered public lands within the approximately 483,700-acre Morley Nelson Snake River Birds of Prey National Conservation Area (NCA), addressed in the September 2008 Resource Management Plan (RMP) and Record of Decision (ROD). The Snake River Birds of Prey NCA RMP identifies implementation level decisions which describe an array of management actions designed to conserve natural and cultural resources on BLM administered land while providing for recreational opportunities. These supplementary rules would help enforce the decisions in the NCA RMP.

**DATES:** Interested parties may submit written comments regarding the proposed supplementary rules until [INSERT DATE 60 DAYS AFTER PUBLICATION].

**ADDRESSES:** You may submit comments by mail, electronic mail, or hand-delivery.

Mail or Hand Delivery: Jared Fluckiger, Outdoor Recreation Planner, Bureau of Land Management, Boise District Office, 3948 Development Ave, Boise, Idaho 83705.

Electronic Mail: [BLM\\_ID\\_BOP\\_NCA\\_Rules@blm.gov](mailto:BLM_ID_BOP_NCA_Rules@blm.gov).

**FOR FURTHER INFORMATION CONTACT:** Jared Fluckiger, Outdoor Recreation Planner, at 208-384-3342 or by e-mail at [BLM\\_ID\\_BOP\\_NCA\\_Rules@blm.gov](mailto:BLM_ID_BOP_NCA_Rules@blm.gov).

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact Mr. Flukiger.

**SUPPLEMENTARY INFORMATION:**

I. Background

II. Public Comment Procedures

III. Discussion of Proposed Supplementary Rules

IV. Procedural Matters

**I. Background**

Public Law 103-64 established the NCA in 1993 for the "...conservation, protection, and enhancement of raptor populations and habitats and the natural and environmental resources and values associated therewith..." The NCA's RMP was completed in September 2008.

The NCA is located in southwestern Idaho, within a 30-minute drive of Idaho's capital, Boise, where almost half of the State's population resides. It is located in Ada, Canyon, Elmore, and Owyhee counties and encompasses approximately 483,700 public land acres extending 81 miles along the Snake River. The NCA includes the 138,000-acre Orchard Training Area, used by the Idaho Army National Guard for military training since 1953. Within its boundary are approximately 41,200 State, 4,800 private, and 1,600 military acres, and 9,300 acres covered by water. These lands are not affected by the NCA designation or subsequent RMP decisions.

These proposed supplementary rules would help the BLM achieve management objectives and implement RMP decisions. They would also provide the BLM with enforcement capability to help prevent damage to natural resources, and provide for public health and safety.

## **II. Public Comment Procedures**

You may mail, e-mail, or hand-deliver comments to Jared Fluckiger, Recreational Planner, at the addresses listed above (See “ADDRESSES”). Written comments on the proposed supplementary rules should be specific and confined to issues pertinent to the proposed rules, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal that the commenter is addressing. The BLM is not obligated to consider, or include in the Administrative Record for the final supplementary rules, comments delivered to an address other than those listed above (See “ADDRESSES”) or comments that the BLM receives after the close of the comment period (See “DATES”), unless they are postmarked or electronically dated before the deadline.

Comments, including names, street addresses, and other contact information for respondents, will be available for public review at the BLM Boise District Office address listed in “ADDRESSES” during regular business hours (8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays). Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your

personal identifying information from public review, we cannot guarantee that we will be able to do so.

### **III. Discussion of Proposed Supplementary Rules**

In keeping with the BLM performance goal of reducing threats to public health, safety, and property, supplementary rules are necessary to protect the natural and cultural resources within the NCA as described in the NCA Management Plan; to allow for safe public recreation and public health; to reduce the potential for environmental damage; and to enhance the safety of visitors and neighboring residents.

The proposed supplementary rules would prohibit rock climbing and rappelling on BLM-administered public land within the Morley Nelson Snake River Birds of Prey NCA because of adverse effects to 16 species of raptors that nest in or on canyon walls at various times of the year. Unstable basalt also poses a significant safety hazard to anyone climbing on the cliffs.

Prohibiting open fires outside of BLM-approved fire rings would help avert human-caused wildfire which would protect archeological sites and slickspot peppergrass (*Lepidium papilliferum*), which is a Federally listed species under the Endangered Species Act.

In the past, some of the NCA's significant cultural resources have been damaged by paintball gun use. Prohibiting paintball activities within the Snake River Canyon and within ¼ mile of the canyon rim eliminates the adverse effects to early cabin architecture, ferry crossings, Oregon Trail segments, and petroglyphs.

With supplementary rules, the BLM would better manage its wildlife habitat and cultural resources. There would be improved opportunities for NCA users to view and study

nesting raptors. Prohibition of rock climbing and rapelling would protect raptor nests, reduce the potential for other environmental damage, and curtail safety risks and rescue emergency situations. The chances of a human-caused wildfire would be reduced, and cultural resources would receive greater protection.

#### **IV. Procedural Matters**

##### Executive Order 12866, Regulatory Planning and Review

The proposed supplementary rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. They would not have an effect of \$100 million or more on the economy. They would not adversely affect, in a material way, the economy; productivity; competition; jobs; environment; public health or safety; or State, local, or tribal governments or communities. The proposed supplementary rules would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. They would not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor would they raise novel legal or policy issues. The proposed rules merely contain rules of conduct for public use of a limited selection of public lands to protect public health and safety.

##### Clarity of the Supplementary Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. The BLM invites your comments on how to make these proposed supplementary rules easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed supplementary rules clearly stated?

- (2) Do the proposed supplementary rules contain technical language or jargon that interferes with their clarity?
- (3) Does the format of the proposed supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- (4) Would the proposed supplementary rules be easier to understand if they were divided into more (but shorter) sections?
- (5) Is the description of the proposed supplementary rules in the SUPPLEMENTARY INFORMATION section of this preamble helpful to your understanding of the proposed supplementary rules? How could this description be more helpful in making the proposed supplementary rules easier to understand?

Please send any comments you have on the clarity of the proposed supplementary rules to the address specified in the ADDRESSES section.

#### National Environmental Policy Act (NEPA)

The BLM prepared an environmental impact statement as part of the development of the NCA RMP. During that NEPA process, many alternative decisions for the NCA were fully analyzed and offered for public comment, including the substance of these proposed supplementary rules. The pertinent analysis can be found in Chapter 4 of the Proposed Resource Management Plan and Final Environmental Impact Statement for the Snake River Birds of Prey National Conservation Area, April 2006. The ROD for the RMP was signed by the Idaho BLM State Director on September 30, 2008. These supplementary rules provide for enforcement of plan decisions. The rationale for the decisions made in the plan is fully covered in the ROD. It is available for review in the BLM administrative

record at the address specified in the ADDRESSES section and online at [http://www.blm.gov/id/st/en/fo/four\\_rivers/Planning/snake\\_river\\_birds.html](http://www.blm.gov/id/st/en/fo/four_rivers/Planning/snake_river_birds.html).

#### Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601-612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These proposed supplementary rules would merely establish rules of conduct for use of a limited area of public lands and would have no effect on business entities of any size. Therefore, the BLM has determined, under the RFA, that the proposed supplementary rules would not have a significant economic impact on a substantial number of small entities.

#### Small Business Regulatory Enforcement Fairness Act

These proposed supplementary rules do not constitute a “major rule” as defined at 5 U.S.C. 804(2). They would not result in an effect on the economy of \$100 million or more, an increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. These proposed supplementary rules would merely establish rules of conduct for use of a limited area of public lands and do not affect commercial or business activities of any kind.

#### Unfunded Mandates Reform Act

These proposed supplementary rules would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year nor do they have a significant or unique effect on State, local, or tribal governments or the private sector. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.).

Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights (Takings).

These proposed supplementary rules would not have significant takings implications nor would they be capable of interfering with constitutionally protected property rights.

Therefore, the BLM has determined that these rules would not cause a “taking” of private property or require preparation of a takings assessment.

Executive Order 13132, Federalism

The proposed supplementary rules would not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed supplementary rules would not conflict with any law or regulation of the State of Idaho. Therefore, in accordance with Executive Order 13132, the BLM has determined that these proposed supplementary rules would not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

The BLM has determined that these proposed supplementary rules would not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

#### Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

The BLM has found that these proposed supplementary rules do not include policies that would have tribal implications.

#### Information Quality Act

The Information Quality Act (Section 515 of Public Law 106-554) requires Federal agencies to maintain adequate quality, objectivity, utility, and integrity of the information that they disseminate. In developing these supplementary rules, the BLM did not conduct or use a study, experiment, or survey or disseminate any information to the public.

#### Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

These proposed supplementary rules would not constitute a significant energy action.

The proposed supplementary rules would not have an adverse effect on energy supplies, production, or consumption, and have no connection with energy policy.

#### Paperwork Reduction Act

These proposed supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq.

#### Author

The principal author of these supplementary rules is Stanley Buchanan, Boise District Law Enforcement Ranger, Bureau of Land Management.

For the reasons stated in the Preamble, and under the authority of 43 CFR 8365.1-6, the Morley Nelson Snake River Birds of Prey NCA, Bureau of Land Management, proposes to issue supplementary rules for BLM-administered lands covered under the Snake River Birds of Prey NCA RMP, to read as follows:

SUPPLEMENTARY RULES FOR THE MORLEY NELSON  
SNAKE RIVER BIRDS OF PREY NATIONAL CONSERVATION AREA

Definitions:

Rock Climbing: A sport/technique in which participants climb up, down or across natural rock formations, usually with ropes and other equipment. Rock climbing is similar to scrambling (another activity involving the scaling of hills and similar formations), but climbing is generally differentiated by its sustained use of hands to support the climber's weight as well as to provide balance.

Rappelling: A descent of a vertical surface, as a cliff or wall, by sliding down a belayed rope that is passed under one thigh and over the opposite shoulder or through a device that provides friction, typically while facing the surface and performing a series of short backward leaps to control the descent.

Improved Campsite: A specific location identified by the BLM for camping. Improved campsites include individual sites in developed campgrounds and developed recreation sites for camping that may or may not contain picnic tables, shelters, parking sites, and/or grills. All improved campsites are identified by a BLM map or sign.

Open Fires: Any fire not in a BLM-approved metal fire ring.

On BLM-administered public land within the Morley Nelson Snake River Birds of Prey National Conservation Area, you must comply with the following supplementary rules:

1. Rock climbing and rappelling are prohibited on all lands administered by the BLM within the NCA.
2. Open fires are prohibited on all lands administered by the BLM within the NCA. Campfires may only be located on improved campsites within BLM-approved metal fire rings on all lands administered by the BLM within the NCA. Additional restrictions may be imposed during periods of high fire danger.
3. Paintball guns and equipment may not be used within the Snake River Canyon or within ¼ mile of the canyon rim.

PENALTIES: On public lands under Section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a) and 43 CFR 8360.0-7, any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined no more than \$1,000 or imprisoned for no more than 12 months or both. Such violations may also be subject to enhanced fines provided for by 18 U.S.C. 3571.

Steven A. Ellis  
Bureau of Land Management  
State Director, Idaho

[FR Doc. 2012-17448 Filed 07/17/2012 at 8:45 am; Publication Date: 07/18/2012]